



Attachment D – Submissions template

Public consultation: Review of the Criminal history registration standard and other work to improve public safety in health regulation

The Australian Health Practitioner Regulation Agency (Ahpra) and the National Boards are inviting stakeholders to have their say as part of our review of the *Criminal history registration standard* (the criminal history standard). There are 19 specific questions we'd like you to consider below (with an additional question 20 most relevant for jurisdictional stakeholders). All questions are optional, and you are welcome to respond to any you find relevant, or that you have a view on.

Your feedback will help us to understand what changes should be made to the criminal history standard and will provide information to improve our other work.

Please email your submission to AhpraConsultation@ahpra.gov.au

The submission deadline is close of business **14 September 2023**

How do we use the information you provide?

The survey is voluntary. All survey information collected will be treated confidentially and anonymously. Data collected will only be used for the purposes described above.

We may publish data from this survey in all internal documents and any published reports. When we do this, we ensure that any personal or identifiable information is removed.

We do not share your personal information associated with our surveys with any party outside of Ahpra except as required by law.

The information you provide will be handled in accordance with [Ahpra's privacy policy](#).

If you have any questions, you can contact AhpraConsultation@ahpra.gov.au or telephone us on **1300 419 495**.

Publication of submissions

We publish submissions at our discretion. We generally [publish submissions on our website](#) to encourage discussion and inform the community and stakeholders about consultation responses. Please let us know if you do not want your submission published.

We will not publish on our website, or make available to the public, submissions that contain offensive or defamatory comments or which are outside the scope of the subject of the consultation. Before publication, we may remove personally identifying information from submissions, including contact details.

We can accept submissions made in confidence. These submissions will not be published on the website or elsewhere. Submissions may be confidential because they include personal experiences or other sensitive information. A request for access to a confidential submission will be determined in accordance with the *Freedom of Information Act 1982* (Cth), which has provisions designed to protect personal information and information given in confidence. Please let us know if you do not want us to publish your submission or if you want us to treat all or part of it as confidential.

Published submissions will include the names of the individuals and/or the organisations that made the submission unless confidentiality is expressly requested.

Australian Health Practitioner Regulation Agency
National Boards
GPO Box 9958 Melbourne VIC 3001 Ahpra.gov.au 1300 419 495

Ahpra and the National Boards regulate these registered health professions: Aboriginal and Torres Strait Islander health practice, Chinese medicine, chiropractic, dental, medical, medical radiation practice, midwifery, nursing, occupational therapy, optometry, osteopathy, paramedicine, pharmacy, physiotherapy, podiatry and psychology.

Initial questions

To help us better understand your situation and the context of your feedback please provide us with some details about you. These details will not be published in any summary of the collated feedback from this consultation.

Question A

Are you completing this submission on behalf of an organisation or as an individual?

Your answer:

Organisation

Name of organisation: Royal Australasian College of Physicians

Contact email: [REDACTED]

Myself

Name: [Click or tap here to enter text.](#)

Contact email: [Click or tap here to enter text.](#)

Question B

If you are completing this submission as an individual, are you:

A registered health practitioner?

Profession: [Click or tap here to enter text.](#)

A member of the public?

Other: [Click or tap here to enter text.](#)

Question C

Would you like your submission to be published?

Yes, publish my submission **with** my name/organisation name

Yes, publish my submission **without** my name/ organisation name

No – **do not** publish my submission

Focus area one – The Criminal history registration standard

Question 1

The *Criminal history registration standard (Attachment A)* outlines the things decision-makers need to balance when deciding whether someone with a criminal history should be or stay registered such as the relevance of the offence to practice, the time elapsed and any positive actions taken by the individual since the offence or alleged offence. All decisions are aimed at ensuring only registered health practitioners who are safe and suitable people are registered to practise in the health profession.

Do you think the criminal history standard gets this balance right?

If you think the *Criminal history registration standard* does not get this balance right, what do you think should change to fix this?

Your answer:

While the factors listed in the *Criminal history registration standard* seem appropriate, it is difficult to know whether the balance is right because there is no indication as to the relative weighting of each of the factors. At paragraph 26 (page 7) of the consultation paper, it is stated that “The factors that are considered relevant for practice might sometimes be given different weight, depending on the profession” and an example is given however, more detail is needed as to how the weighting is determined for each profession in order to assess if the standard has the right balance.

Options to address this:

As cases are assessed and final determinations made, transparency around how various factors were considered will help encourage practitioner understanding and acceptance. Publication of the contemplated decision guide and examples could assist. Develop education solutions with the collaboration of medical colleges to ensure members understand how decisions are made and their relevance to protecting the public.

In addition, the criteria are heavily focused on the practitioner who committed the offence and there is not enough focus on the safety of future patients and whether or not the offence is such that it undermines the necessary trust required in these carer/patient relationships. Questions that arise include:

- Is the offence such that it demonstrates an inability to meet the standards required of a fiduciary relationship/trust whether for one offence or pattern of behaviour.
- Does the behaviour undermine the public's confidence (public safety) in the profession?

Question 2

Do you think the information in the current *Criminal history registration standard* is appropriate when deciding if an applicant or registered health practitioner's criminal history is relevant to their practice? If not, what would you change?

Your answer:

The information in the current *Criminal history registration standard* is **not** appropriate when deciding if an applicant or registered health practitioner's criminal history is relevant to their practice. There is an overall lack of detail regarding how the standard is applied to each profession. As mentioned above, the standard could be improved by including details of the relative weighting of each factor for each profession. This would provide transparency and allow the public trust in the medical profession

Question 3

Do you think the information in the current *Criminal history registration standard* is clear about how decisions on whether an applicant or registered health practitioner's criminal history is relevant to their practice are made? If you think it is not clear, what aspects need further explanation?

Your answer:

The current standard is not clear about how decisions on whether an applicant or registered health practitioner's criminal history is relevant to their practice, character and relationship of trust going forward are made. Further explanation about the process used to make decisions and any appeals process is needed. For example, a link to or a summary of the relevant parts of the Ahpra Regulatory guide could be provided.

It is suggested that more details about the teams at Ahpra regarding specific offences are provided. In addition, better information and easy access for members of the public to obtain practitioner information and APHRA processes and assistance should be provided.

Question 4

Is there anything you think should be removed from the current *Criminal history registration standard*? If so, what do you think should be removed?

Your answer:

Nothing should be removed from the current standard.

Question 5

Is there anything you think is missing from the 10 factors outlined in the current *Criminal history registration standard*? If so, what do you think should be added?

Your answer:

Consideration should be given to inclusion of a factor relating to systemic issues which may be relevant to an individual's criminal history, such as disproportionate representation of Indigenous Peoples in Australia's criminal justice system. This is recognised in the contemplated guide but should form part of the revised standard. In addition, the factor/s should be broad enough to include other potential issues of systemic injustice, both in Australia and overseas.

In addition, more focus is required on future patient safety: e.g., whether or not the offence is such that it undermines the necessary trust required in these carer/patient relationships. Is the offence such that it demonstrates an inability to meet the standards required of a fiduciary relationship/trust whether for one offence or pattern of behaviour. Does the behaviour undermine the public's confidence (public safety) in the profession?

Question 6

Is there anything else you would like to tell us about the *Criminal history registration standard*?

Your answer:

No.

Focus area two – More information about decision-making about serious misconduct and/or an applicant or registered health practitioner’s criminal history

Question 7

Do you support Ahpra and National Boards publishing information to explain more about the factors in the *Criminal history registration standard* and how decision-makers might consider them when making decisions? Please refer to the example in **Attachment B**. If not, please explain why?

Your answer:

Yes, the information in Attachment B should be published. It provides important information that is currently missing from the standard.

Question 8

Is the information in **Attachment B** enough information about how decisions are made about practitioners or applicants with a criminal history? If not, what is missing?

Your answer:

Attachment B provides further explanation regarding the factors used to make decisions but as mentioned above, it does not contain any information about the process used to make decisions or any appeals process.

Question 9

Is there anything else you would like to tell us about the information set out in **Attachment B**?

Your answer:

See answer to question 5 above, relating to the inclusion of broad considerations of potential systemic injustice.

Question 10

Thinking about the examples of categories of offences in **Attachment C**, do you think this is a good way to approach decision-making about applicants and registered health practitioners with criminal history? If you think this is a good approach, please explain why. If you do not agree with this approach, please explain why not.

Your answer:

Attachment C is a good way to approach decision-making about applicants and registered health practitioners with criminal history. Having categories and providing examples of the types of offences that might fall under these categories would provide important information to practitioners and the public and make it clearer what is considered for the first factor listed in the current standard.

However, some matters in Category B may in some cases, depending on the offence, belong in Category A. Thus, the categories could potentially be guidelines but only with clear requirements that they not be used without applying consideration to each offence.

Question 11

Do you think there are some offences that should stop anyone practising as a registered health practitioner, regardless of the circumstances of the offence, the time since the offence, and any remorse, rehabilitation, or other actions the individual has taken since the time of the offence? Please provide a brief explanation of your answer. If you answered yes, please explain what you think the offences are.

Your answer:

The current criminal registration standard would already preclude registration on the basis of certain crimes regardless of the time elapsed, but it is a matter of being clearer about where this may occur. The Category A crimes adequately address the risks, based on a model of presumption, rather than absolute conclusion. To delve further would be relying on moral judgement which is potentially subject to personal opinion or bias. It is possible in a small number clear and compelling cases that registration could be contemplated following a Category A case. Allowing a displaceable presumption of incompatibility to practice recognises this possibility.

Also, as stated above for Question 10, matters in Category B may in some cases, depending on the offence, belong in Category A.

Question 12

Is there anything else you would like to tell us about the possible approach to categorising offences set out in **Attachment C**?

Your answer:

As stated above for Question 10, matters in Category B may in some cases, depending on the offence, belong in Category A. For example, if obscene exposure occurred to a minor.

Focus area three – Publishing more information about decisions that are made about serious misconduct by registered health practitioners

Question 13

Were you aware that disciplinary decisions by tribunals about registered practitioners were published to Ahpra and National Board websites and are linked to an individual practitioner's listing on the public register?

Your answer:

Yes, the RACP is aware of this.

Question 14

Do you think decisions made to return a practitioner to practice after their registration has been cancelled or suspended (reinstatement decisions) for serious misconduct should be published where the law allows? Please explain your answer.

Your answer:

Yes, this information should be published along with an explanation of the factors that led to the decision.

Question 15

Is there anything else you would like to tell us about the approach to publishing information about registered health practitioners with a history of serious misconduct?

Your answer:

Consideration should be given to mitigating the risk of fueling discrimination on ethnic grounds. For example, some names or surnames might identify a practitioner as being of a particular ethnicity or heritage. These groups may already suffer from discriminatory attitudes and expert advice should be sought on how this risk can be mitigated.

If non-publication of full names is against public policy and transparency, Ahpra and the National Boards should work with organisations that are involved with Health practitioners to ensure the approach in addressing serious misconduct is appropriate.

Focus area four – Support for people who experience professional misconduct by a registered health practitioner

Question 16

What do you think Ahpra and National Boards can do to support individuals involved in the regulatory process who are affected by sexual misconduct by a registered health practitioner? (For examples, see paragraph 47 of the consultation paper.)

Your answer:

Yes, developing a statement of Ahpra and National Boards commitments to supporting those affected by sexual misconduct through the regulatory process would help support individuals involved in the process.

The support you are able to offer will depend on the resources you can commit to. There are already excellent examples of support pathways in other parts of the judicial system. For example, each state has a victims of crime support network [Home | Victims of Crime Victoria](#). If resources are limited, Ahpra and National Boards could curate a list of relevant support services to share with victims.

In addition, they should engage in string advocacy in this area and clearly describe pathways for assistance including ready information on your teams that deal with specific areas.

Question 17

Is there anything else you would like to tell us about how we can support individuals affected by a registered health practitioner's professional misconduct?

Your answer:

No.

Focus area five – Related work under the blueprint for reform, including research about professional misconduct

Question 18

Are the areas of research outlined appropriate?

Your answer:

Yes, the areas of research outlined are appropriate.

Question 19

Are there any other areas of research that could help inform the review? If so, what areas would you suggest?

Your answer

Apart from the research areas mentioned in paragraph 50, research into the impact on practitioners who are accused of or found guilty of serious misconduct should be considered.

Additional question

This question is most relevant to jurisdictional stakeholders:

Question 20

Are there opportunities to improve how Ahpra and relevant bodies in each jurisdiction share data about criminal conduct to help strengthen public safety

Your answer:

Yes, lists of deregistered practitioners relevant to each College should be sent to each College.